

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77201278
LAW OFFICE ASSIGNED	LAW OFFICE 109
MARK SECTION (no change)	
ARGUMENT(S)	
Applicant respectfully requests reconsideration of the Examiner's final refusal dated December 4, 2008. Applicant has amended the recitation of services to delete the broad language related to the provision of on-line retail store services and computerized online ordering services, and submits that such deletion will eliminate any likelihood of confusion between Applicant's business-related services and the products sold by the owners of the registered marks, namely alcoholic beverages, cosmetics and toiletries, and herbal tea. Accordingly, Applicant respectfully requests that the Examiner withdraw the outstanding §2(d) refusals and allow its application to proceed to publication.	
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	035
DESCRIPTION	
Promoting the goods and services of others by preparing and placing advertisements in an electronic magazine accessed through a global computer network; Promoting the goods and services of others via a global computer network; Providing a web site which features advertisements for the goods and services of others on a global computer network; Providing information about the goods and services of others via the global computer network; On-line retail store services featuring a wide variety of consumer goods and general merchandise excluding wine, liqueurs, distilled spirits, alcoholic beverages, cosmetics and toiletries, hair care preparations, and herb tea; Computerized on-line ordering featuring general merchandise and general consumer goods excluding wine, liqueurs, distilled spirits, alcoholic beverages, cosmetics and toiletries, hair care preparations, and herb tea; Promoting the goods and services of others through on-line ordering and cataloging of those goods and services; Promoting the goods and services of others by means of operating an on-line shopping mall with links to the retail web sites of others; Business services, namely, providing computer databases regarding the purchase and sale of a wide variety of products and services of others	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 07/07/2006
FIRST USE IN COMMERCE DATE	At least as early as 07/07/2006

GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	035
DESCRIPTION	
Promoting the goods and services of others by preparing and placing advertisements in an electronic magazine accessed through a global computer network; Promoting the goods and services of others via a global computer network; Providing a web site which features advertisements for the goods and services of others on a global computer network; Providing information about the goods and services of others via the global computer network; Promoting the goods and services of others through on-line ordering and cataloging of those goods and services; Promoting the goods and services of others by means of operating an on-line shopping mall with links to the retail web sites of others; Business services, namely, providing computer databases regarding the purchase and sale of a wide variety of products and services of others	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 07/07/2006
FIRST USE IN COMMERCE DATE	At least as early as 07/07/2006
CORRESPONDENCE SECTION	
NAME	Gailyc C. Sonia
FIRM NAME	Zelby, LLC
STREET	100 Main Street
CITY	Pawtucket
STATE	Rhode Island
ZIP/POSTAL CODE	02860
COUNTRY	United States
EMAIL	zelbyllc@gmail.com
AUTHORIZED EMAIL COMMUNICATION	Yes
SIGNATURE SECTION	
DECLARATION SIGNATURE	/gailyc c. sonia/
SIGNATORY'S NAME	Gailyc C. Sonia
SIGNATORY'S POSITION	Attorney of Record, MA Bar Member
DATE SIGNED	05/20/2009
RESPONSE SIGNATURE	/gailyc c. sonia/
SIGNATORY'S NAME	Gailyc C. Sonia
SIGNATORY'S POSITION	Attorney of Record, MA Bar Member

DATE SIGNED	05/20/2009
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Wed May 20 16:06:22 EDT 2009
TEAS STAMP	USPTO/RFR-207.190.220.34- 20090520160622953071-7720 1278-430aa8321974e5cf62d2 bebb3ce4986ec6-N/A-N/A-20 090520160203583902

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OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **77201278** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Applicant respectfully requests reconsideration of the Examiner's final refusal dated December 4, 2008. Applicant has amended the recitation of services to delete the broad language related to the provision of on-line retail store services and computerized online ordering services, and submits that such deletion will eliminate any likelihood of confusion between Applicant's business-related services and the products sold by the owners of the registered marks, namely alcoholic beverages, cosmetics and toiletries, and herbal tea. Accordingly, Applicant respectfully requests that the Examiner withdraw the outstanding §2(d) refusals and allow its application to proceed to publication.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 035 for Promoting the goods and services of others by preparing and placing advertisements in an electronic magazine accessed through a global computer network; Promoting the goods and services of others via a global computer network; Providing a web site which features advertisements for the goods and services of others on a global computer network; Providing information about the goods and services of others via the global computer network; On-line retail store services featuring a wide variety of consumer goods and general merchandise excluding wine, liqueurs, distilled spirits, alcoholic beverages, cosmetics and toiletries, hair care preparations, and herb tea; Computerized on-line ordering featuring general merchandise and general consumer goods excluding wine, liqueurs, distilled spirits, alcoholic beverages, cosmetics and toiletries, hair care preparations, and herb tea; Promoting the goods and services of others through on-line ordering and cataloging of those

goods and services; Promoting the goods and services of others by means of operating an on-line shopping mall with links to the retail web sites of others; Business services, namely, providing computer databases regarding the purchase and sale of a wide variety of products and services of others

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 07/07/2006 and first used in commerce at least as early as 07/07/2006, and is now in use in such commerce.

Proposed: Class 035 for Promoting the goods and services of others by preparing and placing advertisements in an electronic magazine accessed through a global computer network; Promoting the goods and services of others via a global computer network; Providing a web site which features advertisements for the goods and services of others on a global computer network; Providing information about the goods and services of others via the global computer network; Promoting the goods and services of others through on-line ordering and cataloging of those goods and services; Promoting the goods and services of others by means of operating an on-line shopping mall with links to the retail web sites of others; Business services, namely, providing computer databases regarding the purchase and sale of a wide variety of products and services of others

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 07/07/2006 and first used in commerce at least as early as 07/07/2006, and is now in use in such commerce.

CORRESPONDENCE ADDRESS CHANGE

Applicant proposes to amend the following:

Current:

ANDREW GATES
ZELBY, LLC
100 MAIN STREET
PAWTUCKET, RI 02860

Proposed:

Gailyc C. Sonia of Zelby, LLC, having an address of
100 Main Street Pawtucket, Rhode Island 02860
United States
zelbyllc@gmail.com

SIGNATURE(S)

Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34(a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 244. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may

jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /gailyc c. sonia/ Date: 05/20/2009
Signatory's Name: Gailyc C. Sonia
Signatory's Position: Attorney of Record, MA Bar Member

Request for Reconsideration Signature

Signature: /gailyc c. sonia/ Date: 05/20/2009
Signatory's Name: Gailyc C. Sonia
Signatory's Position: Attorney of Record, MA Bar Member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Mailing Address: Gailyc C. Sonia
Zelby, LLC
100 Main Street
Pawtucket, Rhode Island 02860

Serial Number: 77201278
Internet Transmission Date: Wed May 20 16:06:22 EDT 2009
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